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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,343	03/24/2004	Steven Burnett	08350.9194-02000	3491

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CATERPILLAR/FINNEGAN, HENDERSON, L.L.P.  
901 New York Avenue, NW  
WASHINGTON, DC 20001-4413

EXAMINER
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FOX, CHARLES A

ART UNIT	PAPER NUMBER
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3652

MAIL DATE	DELIVERY MODE
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02/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,343	<b>Applicant(s)</b> BURNETT ET AL.	
	<b>Examiner</b> Charles A. Fox	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15 and 19-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15 and 19-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 26, 2008 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15,19-22 and 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman et al. in view of Nozari. Regarding claims 15 and 29 Liberman et al. US 4,112,823 teach a control system for a cylinder based ejector system for a vehicle comprising:

a fluid power source (60);

said fluid source for moving a cylinder (42) attached to an ejection plate;

wherein said cylinder will move at different speeds at different extension lengths when fluid is provided at a constant pressure;

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a speed control (92) operative connected to the cylinder and automatically varying the fluid input to the cylinder such that all stages of the cylinder operate at the same speed;

wherein the speed control automatically changes the fluid input based upon the position of the cylinder sections during the extension stroke as determined by at least one sensor(34). Liberman et al. do not teach changing a fluid flow rate based upon the sensed input. Nozari US 5,865,602 teaches a fluid supply system wherein a pump provides hydraulic fluid flow rates based on a sensed reading, wherein the flow rate is variable as needed. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Liberman et al. with a variable speed controller as taught by Nozari in order to reduce the wear on the pumping system while maintaining the ability to supply fluid at the proper flow rate based upon a sensed condition of the system.

Regarding claim 19 Liberman et al. also teach a valve in communication with the cylinder for adjusting a flow of fluid to said cylinder.

Regarding claims 20 and 21 Liberman further teach the device as having sensors that detect the full extension of each stage of the cylinder and a valve for adjusting the fluid flow to the cylinder in response to a signal from the sensor.

Regarding claim 22 Liberman et al. also teach a sensor in the hydraulic supply system for detecting when fluid pressure in the cylinder exceeds a predetermined value.

Regarding claim 25 Liberman et al. also teach a pump as providing the fluid to said cylinder.

Regarding claims 26-28 Liberman also teaches a valve disposed between the fluid source and the cylinder, wherein the valve has a movable spool for regulating the fluid flow via a variable movable resistive control device.

Regarding claims 30 and 31 Liberman discloses a valve for regulating the fluid flow to the cylinder, wherein said cylinder acts as a motor to move the ejector plate and the power source is a pump.

Regarding claims 32 and 33 Liberman further teaches the device as having sensors that detect the full extension of each stage of the cylinder and a valve for adjusting the fluid flow to the cylinder in response to a signal from the sensor.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman et al. and Nozari as applied to claim 22 above, and further in view of Henneberry. Liberman and Nozari teach the limitations of claim 22 as above, they further teach relieving the pressure from the cylinder if it reaches a predetermined limit, thereby stopping movement of the blade. They do not teach returning the ejector blade to the start position in response to an overpressure signal. Henneberry US 4,522,551 teaches a hydraulic control for an ejection plate with an overpressure sensor, wherein when said sensor is tripped the ejector plate is moved to its original position. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Liberman et al. with controls as taught by Henneberry in order to protect the hydraulic system from damage by immediately relieving a strain on the system when detected.

***Response to Amendment***

The amendments to the claims filed on October 28, 2008 have been entered into the record.

***Response to Arguments***

Applicant's arguments, with respect to 35 U.S.C. 112 rejections have been fully considered and are persuasive when taken in conjunction with the amendments to the claims. The 35 U.S.C. 112 first paragraph rejections of claims 15 and 19-28 have been withdrawn.

Applicant's arguments with respect to claims 15 and 29 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached on 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Fox/

Primary Examiner, Art Unit 3652